

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

MALCOLM COLLIER,

Plaintiff,

VS.

ROBERT D. BUGHER,

Defendant.

CAUSE NO. 3:05-CV-0218 AS

OPINION AND ORDER

Malcolm Collier, a prisoner confined at Westville Correctional Facility, submitted a complaint under 42 U.S.C. § 1983 alleging that Indiana Department of Correction official Robert Bugher violated his federally protected rights. The court must review the merits of a prisoner complaint seeking redress from a governmental entity or officer or employee of a governmental entity, and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A. Courts apply the same standard under § 1915A as when addressing a motion under Fed. R. Civ. P. 12(b)(6) to dismiss a complaint. *Weiss v. Colley*, 230 F.3d 1027, 1029 (7th Cir. 2000).

A claim may be dismissed only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers. Accordingly, pro se complaints are liberally construed.

In order to state a cause of action under 42 U.S.C. § 1983, the Supreme Court requires only two elements: First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of the right acted under color of state law. These elements may be put forth in a short and plain statement of the claim showing that the pleader is entitled to relief. FED. R. CIV. P. 8(a)(2). In reviewing the complaint on a motion to dismiss, no more is required from

plaintiff's allegations of intent than what would satisfy Rule 8's notice pleading minimum and Rule 9(b)'s requirement that motive and intent be pleaded generally.

Alvarado v. Litscher, 267 F.3d 648, 651 (7th Cir. 2001) (citations, quotation marks and ellipsis omitted).

According to the complaint, the defendant knew that Mr. Collier was wrongfully held past his outdate by the Indiana Department of Correction several years ago. Mr. Collier alleges that he was sentenced to one year probation in 1995. in 1996, Mr. Collier violated probation and was sentenced to one year in work release. While he was serving his year on work release, he was arrested for another crime and sentenced to eighteen months in the Indiana Department of Correction, but twelve of the months were suspended. Mr. Collier alleges that he was held past his outdate by the Indiana Department of Correction and was never returned to work release. Mr. Collier asserts that he should have been returned to work release in 1997. He was released from the Indiana Department of Correction on that charge in late 1997 or early 1998.

Because there is no federal statute of limitations for actions filed pursuant to § 1983, courts apply the most appropriate state statute of limitations. *Bell v. City of Milwaukee*, 746 F.2d 1205, 1229 (7th Cir. 1984); *Johnson v. City of Fort Lauderdale*, 903 F.Supp. 1520 (S.D.Fla. 1995), *affirmed* 114 F.3d 1089 (11th Cir. 1997). Section 1983 claims are considered as personal injury claims for purposes of determining the applicable state statute of limitations. *Wilson v. Garcia*, 471 U.S. 261 (1985). "Indiana law requires that any action for injuries to the person or character must be commenced within two years after the cause of action accrues. I.C. 34-11-2-4 (formerly Ind. Code § 34-1-2-2(1))." *Doe v. Howe Military School*, 227 F.3d 981, 987 (7th Cir. 2001); *see also Snoderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 894 (7th

Cir. 2001) (Two-year statute of limitations “is applicable to all causes of action brought in Indiana under 42 U.S.C. § 1983”). The statute of limitations is an affirmative defense, but if a plaintiff “pleads facts that show his suit is time-barred or otherwise without merit, he has pleaded himself out of court.” *Tregenza v. Great American Communications Co.*, 12 F.3d 717, 718 (7th Cir. 1993), *cert. denied*, 511 U.S. 1084 (1994).

The clerk of this court received the complaint in this case on April 12, 2005. The “mailbox” rule established in *Houston v. Lack*, 487 U.S. 266 (1988), under which a prisoner’s submissions to the court are to be deemed as “filed” on the date he delivers it to prison authorities for forwarding to the district court, applies to the initial filing of complaints with the court. *Cooper v. Brookshire*, 70 F.3d 377 (5th Cir. 1995). At the screening stage, this court normally accepts the date a prisoner signs the complaint as the date he delivered it to prison officials for mailing. Mr. Collier signed his complaint on April 11, 2005, so, for the purpose of this memorandum, the court will treat any events occurring before April 11, 2003 as beyond the statute of limitations. The complaint establishes that the events Mr. Collier complains of occurred between 1995 and 1998, far beyond the statute of limitations.

For the foregoing reasons, the court **DISMISSES** the plaintiff’s complaint pursuant to 28 U.S.C. § 1915A(b)(1).

IT IS SO ORDERED.

ENTERED: May 12, 2005

s/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT